

1 JBIESAVP

2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK
4 -----x

5 UNITED STATES OF AMERICA,

6 v.

7 18 Cr. 759 (JSR)

8 SAVRAJ GATA-AURA,

9 Defendant.

Plea

10 -----x
11 New York, N.Y.
12 November 18, 2019
13 4:00 p.m.

14 Before:

15 HON. JED S. RAKOFF,

16 District Judge

17 APPEARANCES

18 GEOFFREY S. BERMAN

19 United States Attorney for the
20 Southern District of New York

VLADISLAV VAINSBERG, ESQ.

MARTIN BELL, ESQ.

Assistant United States Attorney

RANDY ZELIN, ESQ.

Attorney for Defendant

(Case called)

THE DEPUTY CLERK: Will the parties please identify
themselves for the record.

MR. VAINSBERG: Good afternoon. For the United States
Government, Vlad Vainsberg, along with co-counsel, Martin Bell.

THE COURT: Good afternoon.

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2 MR. ZELIN: Good afternoon, your Honor. Randy Zelin
3 for the defendant, Mr. Gata-Aura.

4 THE COURT: Good afternoon. Please be seated.

5 My understanding is that the defendant wishes to
6 withdraw his previously-entered plea of not guilty and enter a
7 plea of guilty to Count One of the indictment; is that correct?

8 MR. ZELIN: Yes, your Honor.

9 THE COURT: Place the defendant under oath.

10 (Defendant sworn)

11 THE COURT: Mr. Gata-Aura, let me first advise you
12 that because you're under oath anything you say that is
13 knowingly false could subject you to punishment for perjury or
14 obstruction of justice for the making of the false statements.

15 Do you understand?

16 You don't have to stand up, but bring that microphone
17 closer to you.

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: You read write, speak, and understand
20 English?

21 THE DEFENDANT: Yes.

22 THE COURT: How far did you go in school?

23 THE DEFENDANT: Bachelor's degree.

24 THE COURT: And have you ever been treated by a
25 psychiatrist or a psychologist?

THE DEFENDANT: No, your Honor.

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1 THE COURT: Have you ever been hospitalized for any
2 mental illness?

3 THE DEFENDANT: No.

4 THE COURT: Have you ever been treated or hospitalized
5 for alcoholism?

6 THE DEFENDANT: No, your Honor.

7 THE COURT: Have you ever been treated or hospitalized
8 for drug addiction?

9 THE DEFENDANT: No, your Honor.

10 THE COURT: Are you currently under the care of a
11 physician for any reason?

12 THE DEFENDANT: No, your Honor.

13 THE COURT: In the last 24 hours, have you taken any
14 pill or medication?

15 THE DEFENDANT: No, your Honor.

16 THE COURT: Is your mind clear today?

17 THE DEFENDANT: Yes.

18 THE COURT: Do you understand these proceedings?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: On the basis of the defendant's responses
21 to my questions and my observations of his demeanor, I am
22 finding he's fully competent to enter an informed plea at this
23 time.

24 You have a right to be represented by counsel at every
25 stage of these proceedings. Do you understand that?

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: If at anytime you can't afford counsel,
3 the Court will appoint one to represent you free of charge
4 throughout all the proceedings. Do you understand that?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Mr. Zelin, are you retained or appointed?

7 THE DEFENDANT: I am retained, your Honor.

8 THE COURT: Mr. Gata-Aura, are you satisfied with Mr.
9 Zelin's representation of you?

10 THE DEFENDANT: Yes, I am.

11 THE COURT: Have you had a full opportunity to discuss
12 this matter with him?

13 THE DEPUTY CLERK: Yes.

14 THE COURT: And have you told him everything you know
15 about this matter?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Now, you had previously entered a plea of
18 not guilty and, indeed, we had scheduled a trial fairly soon;
19 but I understand now that you wish to withdraw your plea of not
20 guilty and enter a plea of guilty to Count One of the
indictment in satisfaction of the indictment. Is that correct?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Mr. Zelin, do you want the indictment read
24 again here in open court or do you waive the public reading?

25 MR. ZELIN: So waived, if your Honor please.

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1 THE COURT: And, Mr. Gata-Aura, you have gone over
2 Count One with your lawyer, yes?

3 THE DEFENDANT: Yes.

4 THE COURT: And you understand the charge against you,
5 yes?

6 THE DEFENDANT: Yes.

7 THE COURT: Before I can accept any plea of guilty, I
8 need to make certain that you understand the rights you will be
9 giving up if you plead guilty so I want to go over with you now
10 the rights that you will be giving up if you enter a guilty
11 plea.

12 First, you have the right to a speedy and public trial
13 by a jury on the charges against you.

14 Do you understand that?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: Second, if there were a trial, you would
17 be presumed innocent and the Government would be required to
18 prove your guilt beyond a reasonable doubt before you could be
19 convicted of any charge.

20 Do you understand that?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: Third, at the trial you would have the
23 right to be represented by counsel, and if at any time you
24 cannot afford counsel, the Court will appoint one to represent
25 you free of charge throughout the trial and at all of the

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2 proceedings.

3 Do you understand that?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Fourth, at the trial you would have the
6 right to see and hear all the witnesses and other evidence
7 against you, and your attorney could cross-examine the
8 Government's witnesses and object to the Government's evidence
9 and could offer evidence on your own behalf, if you so desired,
10 and to have subpoenas issued to compel the attendance of
witnesses on your own behalf.

11 Do you understand?

12 THE DEFENDANT: Yes.

13 THE COURT: You would have the right to testify if you
14 wanted to but no one could force you to testify if you did not
15 want to, and no suggestion of guilt could be drawn against you
16 simply because you chose not to testify.

17 Do you understand that?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: Finally, even if you were convicted, you
20 would have the right to appeal your conviction. Do you
21 understand that?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Now, do you understand that if you plead
24 guilty you will be giving up each and every one of those rights
25 we've just discussed? Do you understand that?

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2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Very good.

4 Now, Count One of the indictment S118 Criminal 759,
5 charges you with a conspiracy, in other words, an agreement
6 with at least one other person, to commit wire fraud and it
7 carries a maximum term of imprisonment of 20 years, plus up to
8 3 years of supervised release to follow any imprisonment, plus
9 a fine of whichever is greatest -- either \$250,000 or twice the
10 amount of money derived from the crime or twice the loss to the
11 victims of the crime -- plus a \$100 mandatory special
assessment, plus restitution and forfeiture.

12 Do you understand those are the maximum punishments
13 under Count One?

14 THE DEFENDANT: Yes.

15 THE COURT: Do you understand that if I were to impose
16 a term of supervised release to follow imprisonment you would
17 be subject to all the terms of supervised release, and if you
18 violated those terms you would be subject to still further
19 imprisonment, going even beyond the term of supervised release.

20 Do you understand that?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: Now, of course, at this point in time I
23 have no idea what sentence I will impose if you plead guilty,
24 but one of the things I would look at, among many other
25 factors, are the sentencing guidelines, which are certain laws

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2 that recommend a range for which the Court may sentence you
3 although they are not binding on the Court.

4 Have you gone over the sentencing guidelines with your
lawyer?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: In that connection, I have been furnished
7 with a draft letter agreement that someone has to sign.

8 MR. VAINSBERG: Permission to approach?

9 THE COURT: Please.

10 We will mark the signed version as Court Exhibit One
11 at today's proceeding, and it takes the form of a letter from
12 Government counsel to defense counsel created November 1st,
13 2019, and it appears, Mr. Gata-Aura, that you signed it earlier
14 today.

15 Is that right?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: And before signing it did you read it?

18 THE WITNESS: Yes, your Honor.

19 THE COURT: Did you discuss it with your counsel?

20 THE DEFENDANT: I have, yes.

21 THE COURT: Did you understand its terms?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Did you sign it in order to indicate your
24 agreement to its terms?

25 THE DEFENDANT: Yes, your Honor.

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2 THE COURT: Now, this letter in Court Exhibit One is
3 binding for you and the Government, but it's not binding upon
4 me, the Court.

5 Do you understand that?

6 THE WITNESS: Yes.

7 THE COURT: For example, this letter says that you and
8 the Government have stipulated and that the guideline range is
9 97 to 121 months' imprisonment. I may agree with that or I may
10 disagree with it. Even if I agree with it, I may sentence you
11 to less or more or anywhere in between, and regardless of where
12 I come out, if you plead guilty you will still be bound by my
sentence.

13 Do you understand that?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Generally, do you understand, if anyone
16 made any kind of prediction or promise or representation to you
17 of what your sentence will be in this case, that person can be
18 completely wrong; and nevertheless, if you plead guilty, you
19 will still be bound by my sentence.

20 Do you understand that?

21 THE DEFENDANT: Yes.

22 THE COURT: I should say also one other thing.

23 Mr. Gata-Aura, under your agreement with the
24 Government, however, you would have agreed that if I do
25 sentence you to 121 months or less, you will not appeal or

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1 otherwise attack your sentence.

2 Do you understand that?

3 THE DEFENDANT: Yes.

4 THE COURT: Does the Government represent that this
5 letter agreement, which we have now marked as Court Exhibit
6 One, is the entirety of any and all agreements between the
7 Government and Mr. Gata-Aura?

8 MR. VAINSBERG: Yes, your Honor.

9 THE COURT: Does defense counsel confirm that as
10 correct?

11 MR. ZELIN: Yes.

12 THE COURT: Mr. Gata-Aura, do you confirm that as
13 correct?

14 THE DEFENDANT: Yes.

15 THE COURT: Mr. Gata-Aura, other than the Government,
16 has anyone else made any kind of promise to you or offered you
17 any inducement to get you to plead guilty in this case?

18 THE DEFENDANT: No, your Honor.

19 THE COURT: Has anyone coerced or threatened you to
20 get you to plead guilty in this case?

21 THE DEFENDANT: No, your Honor.

22 THE COURT: Does the Government represent that if this
23 case were to go to trial, it could through competent evidence
24 prove every essential element of this crime beyond a reasonable
25 doubt?

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2 MR. VAINSBERG: Yes, your Honor.

3 THE COURT: Does defense counsel know of any valid
4 defense that would likely prevail at trial?

5 MR. ZELIN: No, your Honor.

6 THE COURT: Mr. Gata-Aura, tell me in your own words
7 what it is that you did that makes you guilty of this offense.

8 MR. ZELIN: May my client be permitted to read his
9 allocution?

10 THE COURT: I would be very surprised if he didn't.

11 MR. ZELIN: Thank you, your Honor. Would you prefer
12 that my client stand?

13 THE COURT: No.

14 THE DEFENDANT: From in or about September 2015,
15 through in or about June 2017, in the Southern District of New
16 York and elsewhere, I, together with other individuals,
17 including Renwick Haddow, knowingly and wilfully agreed with
18 these other individuals to obtain money from others by means of
19 false statements through the use of email and fax transmissions
20 and the wiring of funds all through and in interstate commerce.

21 I was an agent for Bar Works. I engaged subagents who
22 sold the Bar Works concept as an investment to their clients.
23 I represented Bar Works to the subagents and I transmitted
24 marketing materials to these subagents on behalf of Bar Works.

25 These marketing materials contained false statements
and they did not disclose that Renwick Haddow, for all intents

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2 and purposes, owned and control Bar Works. Instead, these
3 marketing materials disclosed that Jonathan Black was in charge
of Bar Works.

4 I also spoke with subagents who sometimes were
5 investors in Bar Works as well, and I may have spoken with
6 individuals who were straight up investors or potential
7 investors, and I either did or did not -- and I either did not
8 disabuse them of the false statement that Jonathan Black was
9 Renwick Haddow's pseudonym, or I affirmatively stated that
10 Jonathan Black was running Bar Works when I knew this wasn't
11 true

12 I was to receive a commission on these sales of Bar
13 Works, in essence, and I, in fact, received commissions on
14 these sales.

15 I accept full responsibility for my actions and I am
16 sorry.

17 THE COURT: All right. When you did all those things,
18 you and your coconspirator, you knew what you were doing was
19 illegal and wrong; is that right?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Is there anything else regarding the
22 factual portion of the allocution that the Government wishes
23 the Court to inquire about?

24 MR. VAINSBERG: No, your Honor.

25 THE COURT: Is there anything else regarding any

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2 aspect of the allocution that either side wishes the Court to
3 further inquire about before I ask the defendant to formally
enter his plea?

4 Anything else from the Government?

5 MR. VAINSBERG: No, your Honor.

6 THE COURT: Anything from the defense?

7 MR. ZELIN: No, your Honor.

8 THE COURT: Thank you.

9 Mr. Gata-Aura, in light of everything we've now
10 discussed, how do you now plead to Count One of indictment S118
11 Criminal 759, guilty or not guilty?

12 THE WITNESS: I plead guilty.

13 THE COURT: Because the defendant has acknowledged his
14 guilt as charged, because he has shown that he understands his
15 rights, and because his plea is entered knowingly and
16 voluntarily and is supported by independent basis of fact
17 containing each of the essential elements of the offense, I
18 accept his plea and adjudge him guilty of Count One of
19 indictment S118 Criminal 759.

20 Now, the next stage in this process is that the
21 probation office will prepare what's called a presentence
22 report to assist me in determining sentence.

23 As part of that, you will be interviewed by the
24 probation officer. You can have your counsel present to advise
25 you of your rights, but under my practices if you want to

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2 qualify for the full credit of acceptance of responsibility,
3 you personally need to answer the questions put to you by the
probation officer

4 Do you understand?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: After that report is in draft form, but
7 before it's in final form, you and your counsel and also
8 Government counsel have a chance to review and it and offer
9 changes, corrections, or additions directly to the probation
officer who will prepare the report.

10 Independent of that, counsel for both sides are given
leave to submit directly to the Court in writing any and all
materials concerning any aspect of sentence, provided those
materials are submitted no later than one week before sentence.

11 And we will put the sentence down for?

12 THE DEPUTY CLERK: March 18th at 4:00.

13 THE COURT: March 18th at 4:00 p.m.

14 All right. Very good.

15 Anything else we need to take up today?

16 MR. VAINSBERG: Nothing from the Government.

17 MR. ZELIN: Nothing further from the defense. Thank
you.

18 THE COURT: Thank you.

19 (Adjourned)